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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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09/719,706

12/13/2000

Gabriel Guary

35711-00001

3249

29471

7590

07/02/2004

MCCRACKEN & FRANK LLP

200 W. ADAMS STREET

SUITE 2150

CHICAGO, IL 60606

EXAMINER

ASHBURN, STEVEN L

ART UNIT

PAPER NUMBER

3714

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/719,706

Applicant(s)

GUARY ET AL.

Examiner

Steven Ashburn

Art Unit

3714

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-10, 12 and 13.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet


MARK SAGER
PRIMARY EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: The applicant's request for reconsideration is unpersuasive. The applicant contends that office action dated March 01, 2004 fails to provide motivation to combine Yamaguchi with 3D Zonemaster without improper hindsight. The examiner respectfully disagrees. Motivation to combine the references is provided on page 4 of the office action. No hindsight was required because the suggestion to combine is found entirely within the prior art without reference to the applicant's disclosure. Thus, the rejection is maintained.

Continuation of 10. Other: The amendment after final makes no changes to the claims. The claims stand rejected for the reasons stated in the office action dated March 01, 2004.

The examiner acknowledges the applicant's identification of US 6,672,962. However, the applicant failed to properly submit the reference for consideration. See 37 CFR 1.98. Furthermore, if the reference were to be properly submitted, it would not be considered after final rejection. See 37 CFR 1.97(c). Thus, the reference has not been considered.